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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 TECSPEC LLC, *et al.*,

4 Plaintiffs,

5 v.

24 Civ. 8077 (JHR)

6 JOSHUA DONNOLO, *et al.*,

Telephone Conference

7 Defendants.

8 -----x

9 New York, N.Y.

10 April 17, 2025

3:45 p.m.

11 Before:

12 HON. JENNIFER H. REARDEN,

13 District Judge

14 APPEARANCES

15 COLE SCHOTZ

Attorneys for Plaintiffs

16 BY: ARIELLE WASSERMAN

17 ROSENBERG & ESTIS, P.C.

18 Attorneys for Defendants

19 BY: MATTHEW S. BLUM

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(Case called)

THE COURT: Good afternoon counsel, who do we have?

MS. WASSERMAN: Good afternoon, your Honor. This is Arielle Wasserman of Cole Schotz on behalf of plaintiff.

MR. BLUM: Good afternoon, your Honor. This is Matthew Blum with Rosenberg & Estis, for the defendants, counterclaim plaintiffs.

THE COURT: We're here on the counterclaim plaintiffs applications for a TRO at ECF No. 120, and specifically for a TRO stating that counterclaim plaintiffs are not "currently restrained or enjoined from entering into any new contracts with businesses desiring to conduct business with any of the counterclaim plaintiffs," and restraining counterclaim defendants from "interfering with counterclaim plaintiffs' fulfillment of counterclaim plaintiffs' new and existing contracts and unreasonably interfering with counterclaim plaintiffs' business opportunities which include dissemination of false or defamatory statements concerning the disposition of this case, false statements concerning the status or nature of counterclaim plaintiffs' ability to perform or fulfill contracts, threats against counterclaim plaintiffs' business prospects and any other defamatory information designed to interfere with counterclaim plaintiffs' business prospects." That's ECF No. 120, order to show cause at 3.

Mr. Blum, you're on right? I think I heard you

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1 introduce yourself.

2 MR. BLUM: Yes, your Honor.

3 THE COURT: All right. I want to clarify one point
4 with you before I allow both sides to make their arguments.
5 The requested TRO relates to your client's claim for tortious
6 interference with business relationships; is that correct?

7 MR. BLUM: It certainly lends to that prospect, your
8 Honor. The order to show cause seeks to prevent the
9 interference with these business opportunities, yes.

10 THE COURT: Okay. So I'm not talking now about the TI
11 but strictly about the TRO.

12 MR. BLUM: Yes.

13 THE COURT: But that rests on the tortious
14 interference claim. So there isn't any other claim for which I
15 need to determine whether your clients are likely to succeed
16 right now; is that correct?

17 MR. BLUM: Your Honor, this actually lends to an
18 interesting timing issue. Where there are actively projects
19 and contracts to which the counterclaim plaintiffs are seeking
20 to secure and it is an active process that the
21 plaintiff/counterclaim defendants are attempting to interfere
22 with the acquisition of those projects. And so I would say
23 that to claim a tortious interference with that prospective
24 business opportunity, that may not be ripe, because we have not
25 been formally denied yet which is the basis for the TRO which

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1 is why we want the behavior to stop.

2 THE COURT: Right. It's ongoing, is what you are
3 alleging?

4 MR. BLUM: Correct, your Honor. Right. And it stems
5 from essentially what is defamatory *per se* statements that are
6 being made in the market.

7 If your Honor may recall, the plaintiff initially
8 commenced this action with a temporary restraining order, which
9 was denied. So the plaintiffs' not obtaining that temporary
10 restraining order can't then go into the market and say,
11 actually, they are restrained. It's a categorically false
12 statement among other similarly false statements to, in effect,
13 exact a *de facto* temporary restraining order by preventing our
14 clients from entering the market, when they were denied that
15 temporary relief that was sought initially. And so --

16 MS. WASSERMAN: Your Honor, may I interrupt, please?

17 THE COURT: What I want to do is I want to hear both
18 sides out. And I started with a question to Mr. Blum, who is
19 representing the counterclaim plaintiffs, and it's their
20 application.

21 So Mr. Blum, why don't you tell me, more broadly,
22 anything you want me to hear about your application now. And
23 then I'm going to turn to Ms. Wasserman and let her argue.

24 MS. WASSERMAN: Thank you, your Honor.

25 MR. BLUM: Yes, your honor. Thank you.

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1 Your Honor, this application seeking specifically the
2 temporary restraining order deferring arguments and
3 presentation on the preliminary injunction to the return date
4 on, I believe, May 15. On the temporary restraining order, the
5 movants are seeking to restrain the plaintiff/counterclaim
6 defendants from interfering with ongoing prospective business
7 opportunities by way of unlawful conduct.

8 And so if I could draw the Court's attention to the
9 specified three requested orders of relief, which your Honor
10 had read previously, as Judge Hurley may characterize it "this
11 is ice in the wintertime." It's not anything that the movants
12 aren't already essentially entitled to. The clarification that
13 there is no issued restraint on the counterclaim plaintiffs to
14 conduct business or to fulfill orders or anything else that the
15 plaintiff counterclaim defendants may have disseminated within
16 market. So the clarifying order seeks to undo any of these
17 false attestations that are made within the market.

18 And in that vein, your Honor, I would draw the Court's
19 attention to our brief, and in particular the areas and the
20 sections that deal with defamation with respect to companies.
21 And so your Honor, we cite in our brief, *IDG USA, LLC v. Schupp*
22 416 F. App'x 86 (2d Cir 2011) which makes very clear that
23 threat dissemination trade secrets and loss of good will is a
24 basis for irreparable harm. This is further supported with
25 *Medicrea USA, Inc. v K2M Spine, Inc.* It's an unpublished

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1 decision, WL 3407702 (SDNY 2018) which relies on a Second
2 Circuit case *Doherty Associates v. Saban Entertainment*, 60 F.3d
3 27 (2d Cir. 1995). In that Second Circuit controlling opinion,
4 the Second Circuit is very clear that in instances where you
5 have reputational injuries to a person's business or to a
6 company that consists of statements that imputes some form of
7 fraud or misconduct or general unfitness or incapacity or
8 inability to perform, that constitutes defamation *per se*.

9 So when we're talking about irreparable harm, your
10 Honor, we have a very clear and well-settled law that a finding
11 of irreparable harm exists when there's evidence to show a
12 threatened loss of good will or customers -- of potential or
13 actual customers that can't be rectified by monetary damages.
14 Again, that's *Doherty v. Saban*, 60 F.3d 27 at 37 (2d Cir.
15 1995).

16 Then I would draw the Court's attention to the
17 declaration that was submitted with the application. There are
18 actually two declarations that are submitted with the
19 application, and that's the declaration of Michael Donnolo
20 entitled -- with a subtitle, Sensitive Business Information.

21 THE COURT: Yes.

22 MR. BLUM: And the sensitive business information
23 declaration is distinct from the declaration of Michael Donnolo
24 that was also submitted as the preceding document because there
25 is reference to the potential client. This is really what

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underscores the importance of a temporary restraining order.

And if you look at Paragraph 5 of the declaration of Michael Donnolo, you have the items and statements that the plaintiff/counterclaim defendants are telling people within the market that we, the counterclaim plaintiffs, are attempting to do business. And so they are making claims that if anyone does business with us, they are going to sue them for doing business with us or that the products that we sell are going to be reclaimed because the model that we are selling actually doesn't belong to us, it belongs to Tecspec, which there is no finding of that, and that's just not true.

There's other fundamentally false statements being disseminated in the market saying we are incapable of fulfilling order, incapable of entering into new contracts. And this is exactly what the Second Circuit is talking about, it's the incapacity or inability to perform one's duties and the unfitness to perform under a contract in one's trade. This is defamation *per se*, is actionable.

THE COURT: Mr. Blum, you say it's actionable, but you didn't actually -- you seem to be suggesting that irreparable harm is all you need to show. You didn't actually bring a defamation claim here.

MR. BLUM: Correct, your Honor. And so --

THE COURT: What about the likelihood of success on the merits?

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1 MR. BLUM: Your Honor, in the bringing of this
2 application, I would say that if the Court can issue the
3 temporary restraining order, this may eliminate the need to
4 make a defamation claim. So what we are talking about is
5 damages. To support the claim you need the liability and you
6 need the Court to find damages. So if we can abrogate the
7 damages that may be incurred as a result of the false
8 statements, then this may be something that could be obviated
9 altogether.

10 It's well settled, your Honor, that a movant not
11 seeking something that is of the ultimate merits of the case or
12 the ultimate fact or issue of a case actually bears a lower
13 threshold to demonstrate entitlement of success on the merits.
14 Here, what we're asking the Court to do is to prevent the
15 counterclaim defendant from doing what they shouldn't be doing
16 anyway.

17 And so, your Honor you're absolutely right, we didn't
18 counterclaim a defamation case, but that doesn't foreclose our
19 ability to do that once we ascertain damages that are resulting
20 from that defamatory conduct. And so this underscores the
21 importance of coming to the Court and say, this is happening in
22 real time. We don't want to lose out on this ability to
23 perform these contracts in the market. And if we do lose that
24 opportunity, yes, absolutely, your Honor, we would make a claim
25 for monetary damages relating to the defamation. We don't know

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1 that we have that damages component to make that claim at this
2 moment, and we are trying to avoid that entirely.

3 As the affirmation of Michael Donnolo, the business
4 information will say, at Paragraph 17, that this is a
5 make-or-break moment. This is a make-or-break moment for the
6 counterclaim plaintiffs. And now that I'm looking at it, I
7 don't know if that is specifically the paragraph, your Honor.
8 It's Paragraph 11. It says this is a make-or-break moment on a
9 business that's just starting up. So to have the opportunity
10 for a contract or business prospect like this may result in the
11 success of the business. And failure to get this particular
12 contract, as a result of the things that are being stated in
13 the market by plaintiffs-counterclaim defendant, that could
14 make the business fail, which is ultimately the purpose of the
15 statement. And so the Second Circuit is very clear that this
16 constitutes irreparable harm. The fact that we have an
17 unquantifiable potential harm here if the Court doesn't
18 interfere with judicial intervention and prevent the
19 counterclaim defendants from doing what they're doing, we could
20 essentially be out of business.

21 Conversely, in obtaining the temporary relief that we
22 are seeking there's no -- and this is going to the balance of
23 the equities, your Honor -- there is no prospect for prejudice
24 because if the counterclaim defendants are doing any of these
25 things, they shouldn't be doing these as a matter of law.

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1 And so the application is ripe, and it has an
2 immediate need because we need to stop this activity in its
3 tracks. And your Honor is absolutely right, we didn't bring a
4 claim for defamation. We are not opposed to doing that and
5 hopefully we can avoid that by preventing this behavior.

6 I think I made that -- I think I made my point, your
7 Honor.

8 THE COURT: All right. Well, I heard that. I hear
9 what you're saying, but I want to be clear on this one point.
10 Because likelihood of success on the merits needs to be shown
11 for a TRO. So what legal claims am I reviewing right now in
12 this posture?

13 MR. BLUM: Your Honor, the likelihood of success on
14 the merits for plaintiffs' claim -- or rather, the counterclaim
15 plaintiffs' counterclaims against the counterclaim defendant,
16 for one, is a violation of the non-compete. If your Honor may
17 recall, part of the plaintiffs' initial application sought a
18 temporary restraining order against the defendants for
19 violating a non-compete, and the non-compete is very clear.
20 The non-compete prevents competition within the county in
21 which -- or rather the competing business cannot be located
22 within the county in which the plaintiff Tecspec has done
23 business. The --

24 THE COURT: How does the violation of the non-compete
25 relate to the restraints that you're requesting, the temporary

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1 restraints?

2 MR. BLUM: The violation of the non-compete, your
3 Honor, is related to the restraints we're seeking. The
4 plaintiff is simultaneously seeking these bids. This is an
5 open-bidding process. We are submitting bids, and they are
6 submitting bids. At least we are advised they are submitting
7 bids. We have certainly not foreclosed them from submitting
8 bids. That's how we know this prospective project is talking
9 to both sides. And their side is saying, in competition with
10 us, saying that we are not actually able to submit bids because
11 we can't compete, we can't fulfill orders, we are foreclosed
12 because of legal process, all of these things that aren't true.

13 Your Honor, the counterclaim defendants are attempting
14 to compete in violation of the non-compete with a business,
15 Braya, for which they are able to compete with Braya. Braya is
16 able to compete with Tecspec, pursuant to the non-compete. But
17 they are attempting to interfere with Braya's ability to
18 compete for these bids. This ties directly to the counterclaim
19 defendant's ability to compete or not compete with Braya.

20 THE COURT: Thank you, Mr. Blum.

21 Ms. Wasserman, I'll hear from you now.

22 MS. WASSERMAN: Good afternoon, your Honor.

23 I'd like to start out with just a couple of threshold
24 issues. Number one, your Honor, as you mentioned, the relief
25 that's being sought is threefold and limited. It's to confirm

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1 that counterclaim plaintiffs are not enjoined from entering
2 into new business. It's to confirm that counterclaim
3 defendants are enjoined from interfering because of existing
4 contracts. And it's to ensure that counterclaim defendants are
5 enjoined from unreasonably interfering with business
6 opportunities. There is no claim for defamation. So anything
7 to say about defamation is neither here nor there. Because as
8 your Honor also mentioned, the test for preliminary injunction
9 is threefold. You need irreparable injury. But also need
10 likelihood of success on the merits, and you also need balance
11 of the equities, neither of which have been discussed here,
12 that's number one.

13 Number two, my friend conceded that the TRO is
14 actually a restatement of law. Our clients are never allowed
15 to tortiously interfere with contracts or to engage in
16 defamation because they uphold the New York law, and that's not
17 the purpose of a TRO. The purpose of a TRO is to try and
18 enjoin specific harm that is happening and or that is about to
19 happen, and that is not reflected in the language of the TRO.

20 The third preliminary issue that I would like to point
21 out here -- sorry, I apologize. The third preliminary issue
22 that I want to point out here is that there is no irreparable
23 injury because what has been represented to you as to what our
24 clients are saying in the marketplace is incorrect. And the
25 reason that I'm able to say that with such confidence as I'm

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1 saying here is that we have instructed our clients, and our
2 clients continued to do so, that when they are asked about what
3 is ongoing in this action or anything at all about Braya, they
4 direct those inquiries to us at counsel.

5 And I will just say, I think there are two things that
6 are being conflated. There is a specific client that is the
7 subject of Donnolo's affidavit. And then today Mr. Blum seemed
8 to mention other potential clients without naming them or
9 identifying them. That's a separate issue that I'll get to
10 later.

11 To the extent they are talking about a specific client
12 referenced in the sensitive business affidavit, we ensured that
13 plaintiffs do not speak to the separate client themselves in
14 order to avoid this exact situation. And instead, they
15 directed this client to Jason Melzer, my colleague, to answer
16 the questions. And I'm happy to tell you about that. In early
17 in March, Jason Melzer spoke with Jeremy Bloom he's an internal
18 counsel of a separate client. And again, on March 5th with
19 John Weissman, who was external counsel for that client. And
20 Jason was specifically asked both by internal counsel and
21 external counsel, one, whether there was anything preventing
22 Roth [ph.] Group from accepting bids from either Braya or
23 Tecspec to which Jason informed us, no.

24 And two, specifically, if there is a threat that if
25 Roth Group picks one over the other, the subject client will be

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1 sued. And Jason responded very clearly that there was no
2 threat on our end of suing clients, obviously, excepting any
3 separate misfeasance that might occur. We are reserving that
4 right. But we were very, very clear about what would or would
5 not happen on our end, should this go in either direction.

6 When external counsel asked for more information,
7 Jason directed him to the public docket in order to ensure he
8 did not say anything improper. And very carefully he never
9 spoke about any of the allegations. He only said, "there is no
10 injunction currently in place." That is what he said. And we
11 are happy to put that in a declaration if that is something
12 your Honor is looking for.

13 And I want to point out, your Honor, that I think it's
14 noteworthy that I'm coming to you here with names, dates, and
15 times. And that Donnolo sensitive business declaration, on the
16 other hand, is vague and unspecified. And that's not a
17 coincidence. To the extent that the claim is confidential, we
18 can't get into that, that's not accurate. We can give dates,
19 times, places without providing those specific identifying
20 details like a name. And that alone is reason for your Honor
21 to deny this TRO, as there is just no basis for irreparable
22 harm.

23 Furthermore, I'd like to point out that what my friend
24 said earlier that the standard of proof is lower than the
25 ultimate resolution of the merits, that's incorrect. I would

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1 like to direct your Honor to *Vanlines. Com LLC v. Net-Marketing*
2 *Group Inc.*, 486 F. Supp. 2d 292 (S.D.N.Y. 2007). Where the
3 Court said, and I quote, "a preliminary injunction is an
4 extraordinary and drastic remedy, one that should not be
5 granted unless the movant, by clear showing, carries the burden
6 of persuasion." And I would posit, your Honor, that no clear
7 showing exists here because my friend isn't able to point to
8 what causes of action are premising this TRO. And when asked
9 about that, the one that he mentioned specifically is the
10 breach of non-compete. As your Honor referenced, it's not
11 clear to me, and, indeed, I would argue that it's not at all
12 connected to the relief being sought. The breach of a
13 non-compete has nothing to do with whether or not the
14 counterclaim defendants are allegedly interfering with
15 contract, which, again, I'm comfortable noting they are not.

16 And to the extent that a tortious interference claim
17 is underpinning this TRO, they've demonstrated no likelihood of
18 success, let alone success by a clear showing. Because state
19 law is clear that in order to successfully assert tortious
20 interference claims you need to provide details as to who those
21 contracts are with. And outside of the subject client, which I
22 reference the earlier, there are no allegations as to what
23 those contracts are, who they were. Same with business
24 opportunities, you can't -- just making vague accusations of
25 hostile business opportunities in the marketplace, it is not

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1 sufficient, as a matter of law, from a pleading standard, let
2 alone a clear showing of evidence.

3 And if your Honor would like, I'm happy to go through
4 the other five claims that are listed in counterclaim
5 plaintiff's papers and go through why those also do not have a
6 likelihood of success on the merits, if that would be of help
7 to, your Honor.

8 THE COURT: Thank you. Well, I think that we've
9 established at the outset here and that those are not coming
10 into play right now, as we talk about the TRO and I decide that
11 today. I think that that's -- those claims are for another
12 day. I think I heard what I need from you.

13 Mr. Blum, it's your application. I'll let you reply
14 if you wish.

15 MR. BLUM: Thank you, your Honor.

16 I would just like to touch on something that's in our
17 brief, starting at page 3. We have actually walked through all
18 of our counterclaims against the counterclaim defendant. And
19 so I picked that one because it is key and material to the
20 issue that we're here about. But when we're talking about
21 likelihood of success on the merits, your Honor, you have on
22 page 5 success on the merits for counterclaim plaintiffs'
23 Defend Trade Secrets Act violation. So your Honor may recall
24 or it was laid out in papers that the counterclaim defendants
25 broke in, broke and entered into the Braya space. The police

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1 were called. And the individually-named plaintiffs, Robert
2 Senia, Richard Rose, and Ralph Schlenker took pictures of all
3 of the products, the set up, and the trade secrets of Braya. I
4 mean, this is not -- this is not in dispute. Maybe they're
5 going to argue that these are not trade secrets. But it's not
6 disputed that these individuals broke the law, broke in, took
7 pictures. So we have, your Honor, an action and claim against
8 the counterclaim defendants for violations of Defend Trade
9 Secrets act for trespass. I mean, this is indefensible. We
10 have videos of that that we provided to the Court.

11 We also have the tortious interference claim, and also
12 the good faith and fair dealing claim which underlies the
13 relationship between the plaintiff and the defendants. So in
14 the counterclaims against the counterclaim defendant, the
15 counterclaim plaintiffs make some troubling allegations against
16 the counterclaim defendant, which includes misappropriation of
17 assets to the tune of millions or even tens of millions of
18 dollars and violation of federal RICO statutes, fraud. There
19 is a lot of allegations, and it's pleaded with particularity.
20 The counterclaim -- the allegations in the answered
21 counterclaims are robust. And we believe that this is
22 absolutely going to sustain, at the very least, this motion, I
23 mean, a likelihood of success on the merits.

24 We have -- we have a position, we take a position that
25 all of these allegations will be proven at trial. And to the

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1 extent that we need to demonstrate that today, your Honor, I
2 would suggest that with a temporary restraining order, we don't
3 need to prove the entitlements and ultimate form of relief in
4 the matter at this stage. But we need to show that we have a
5 likelihood of success on at least one of these claims. So,
6 your Honor, with respect to the motion or rather the claim for
7 breach of non-compete at page 3 in the memorandum of law, we're
8 very clear that the non-compete clause requires in Section 25
9 of the operating agreement, that Tecspec is located -- or
10 rather, the competing business cannot be located in a county in
11 which Tecspec is doing or has done business. And so Braya is
12 located in Richmond County. Tecspec has never done, ever,
13 business in Richmond County. That's the reason Braya is there.

14 And so I presume that's the reasoning that the Court
15 came to in the plain language of this non-compete that that's
16 not competition. It's not a violation of the non-compete. So
17 likewise, we have SRS and the counterclaim defendants that are
18 conducting business and are located in locations where Tecspec
19 is doing business. The non-compete provision, specifically
20 restricting business in the areas where Tecspec hasn't done
21 business, that being Brooklyn, and the counterclaim defendants
22 being located in Brooklyn is an obvious and clear violation of
23 the non-compete provision.

24 So in this vein, your Honor, I think we do need, I do
25 believe we meet the likelihood of success on the merits. With

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1 respect, again, to the irreparable harm and balancing the
2 equities, the irreparable harm is very clear. The Second
3 Circuit is very clear on what constitutes irreparable harm and
4 that false statements being made in the market to dissuade
5 people or entities from doing business with Braya constitutes
6 defamation *per se*, which the Second Circuit clearly says is
7 irreparable harm.

8 And if we are looking at balancing the equities, I
9 would like to draw the Court's attention to what Ms. Wasserman
10 stated in arguing in opposition. And I believe that the
11 counterclaim defendant will give an affirmation or affidavit or
12 declaration saying that they haven't done any of these things.
13 Well, your Honor, we wouldn't be here if that were the case.
14 We wouldn't need to have an order that clarifies the things
15 that have been disseminated aren't true, and we wouldn't need
16 an order restraining activity that they're not doing. We
17 wouldn't need that. And so the reason that we're here is
18 because it's at the behest of the entities and individuals that
19 want to do business with Braya but are scared to do so based on
20 these allegations. That is exactly we're here.

21 So I would go back to the balancing of the equities.
22 If what we are saying is accurate, and I believe that it is,
23 then there is absolutely no harm that could possibly come to
24 the counterclaim defendant and the Court issuing this order,
25 not any harm whatsoever. And likewise, in the absence, the

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1 counterclaim plaintiffs would be irreparably harmed in the
2 event that the defendants are doing this. And we do have
3 attestations by Michael Donnolo in firsthand accounts that this
4 is what the counterclaim defendants are doing. And so we are
5 looking at this --

6 THE COURT: All right. I think I have enough now.
7 What I would like to do is take a few minutes to think about
8 what I've heard this afternoon and then come back and give you
9 my ruling.

10 MR. BLUM: Yes, your Honor.

11 MS. WASSERMAN: Thank you, your Honor.

12 THE COURT: I'm going to do that now. It won't be
13 very long. I'm going to try to keep this to a few minutes. So
14 if you would try to bear with me, I will be back as soon as I
15 can, and I will give you my ruling.

16 MS. WASSERMAN: Thank you, your Honor.

17 THE COURT: All right. Thank you.

18 (Recess)

19 THE COURT: I'm prepared to rule on the counterclaim
20 plaintiffs' motion for a TRO.

21 The Court assumes the parties' familiarity with the
22 facts of this matter.

23 In terms of the applicable legal standards, in the
24 Second Circuit the standard for obtaining a temporary
25 restraining order is the same as the standard for obtaining a

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1 preliminary injunction. See, for example, *Basank v. Decker*,
2 449 F.Supp. 3d 205, 210 (S.D.N.Y. 2020) ("It is well
3 established in this circuit the standard for entry of a TRO is
4 the same as for a preliminary injunction." See also *Empire*
5 *Trust, LLC v. Cellura*, No. 24 Civ. 859 (KMK), 2024 WL 1216729,
6 at *2 (S.D.N.Y. Mar. 21 2024); *Free Country Limited v. Drennen*,
7 235 F. Supp 3d 559, 565 (S.D.N.Y. 2016).

8 In general, a party seeking a TRO or a preliminary
9 injunction must establish a likelihood of success on the merits
10 that the movant is likely to suffer irreparable injury in the
11 absence of preliminary relief, that the balance of hardships
12 tips in its favor, and that an injunction is in the public
13 interest.

14 For that proposition I'm quoting *Pharaohs GC, Inc. v.*
15 *United States Small Business Administration*, 990 F.3d 217, 225,
16 (2d Cir. 2021) (quoting *Winter v. National Resources Defense*
17 *Council Inc.*, 555 U.S. 7, 20, (2008)).

18 Like a preliminary injunction, a temporary restraining
19 order is an extraordinary remedy never awarded as of right.
20 *Bragg v. Jordan*, 669 F. Supp. 3d 257, 267 (S.D.N.Y. 2023).
21 (Quoting *Winter*, 555 U.S. at 24); see also *Anwar v. Fairfield*
22 *Greenwich Limited*, 728 F. Supp 2d 462, 472 (S.D.N.Y. 2010).
23 ("Temporary restraining orders and preliminary injunctions are
24 among the most drastic tools in the arsenal of judicial
25 remedies, and must be used with great care.")

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1 From a review of the counterclaim plaintiffs' brief
2 and what I've heard during argument today, tortious
3 interference with business relationships, which is also called
4 tortious interference with prospective economic advantage, is
5 the only legal claim brought by counterclaim plaintiffs that
6 could justify the restraint requested in a proposed TRO. The
7 requested restraints aim to prevent counterclaim defendants
8 from "interfering" with counterclaim plaintiffs "fulfillment of
9 new and existing contracts and business opportunities. ECF No.
10 120 at 3.

11 These restraints would not prevent counterclaim
12 defendants from competing with Tecspec or disclosing trade
13 secrets. So counterclaim plaintiffs' claims for breach of the
14 non-compete agreement and misappropriation of trade secrets are
15 not at issue here. I will therefore review whether
16 counterclaim plaintiffs are likely to succeed on the tortious
17 interference claim.

18 A plaintiff suing for tortious interference with
19 business relationships must prove that "there is a business
20 relationship between the plaintiff and a third party; the
21 defendant, knowing of that relationship intentionally
22 interferes with it; a defendant acts with the sole purpose of
23 harming the plaintiff or failing that level of malice, uses
24 dishonest, unfair, or improper means; and the relationship is
25 injured" *Catskill Development LLC v. Park Place Entertainment*

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1 Corporation, 547 F.3d 115, 132 (2d Cir. 2008).

2 "A claim for interference with prospective contractual
3 relations is very difficult to sustain." *Kramer v.*
4 *Pollock-Krasner Foundation*, 890 F. Supp. 250, 258 (S.D.N.Y.
5 1995).

6 First, an allegation of tortious interference with
7 business relationships must include a "sufficiently particular
8 allegation of interference with a specific contract or business
9 relationship" of the counterclaim plaintiffs. *Kolchinsky v.*
10 *Moody's Corporation*, No. 10 Civ. 6840 (PAC) 2012 WL 639162, at
11 *6 (S.D.N.Y. Feb. 28, 2012).

12 With one exception counterclaim plaintiffs have failed
13 to show that counterclaim defendant "interfered with a specific
14 business relationship," *id.* at 7. Counterclaim plaintiffs'
15 assertion that counterclaim defendants have made "false
16 statements and threats to potential and current Braya
17 customers" ECF No. 120-1, that's the Donnolo declaration, is
18 too "broad" and of an allegation to "state a claim for tortious
19 interference with business relationships" citing *Kolchinsky*
20 2012 WL 639162 at *6 (dismissing tortious interference claims
21 for false statements the defendant allegedly made to "potential
22 employers in the financial industry" for failing to identify a
23 specific business relationship); See *Nourieli v. Lemonis*, No.
24 20 Civ. 2021 WL 3475624 at *6. (S.D.N.Y. Aug. 6, 2021)
25 (dismissing the plaintiff's claim for tortious relations with

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1 its "customers" because "these types of generalized allegations
2 about hypothetical business relations are not enough." *Keswani*
3 *v. Sovereign Jewelry Inc.*, No. 20 Civ. 8934 (KPF), 2021 WL
4 4461332, at *14 (S.D.N.Y. Sept. 29, 2021) (concluding that
5 "Plaintiff's barebones allegations regarding Defendants'
6 sabotage of his relationships with 'vendors' and 'suppliers'
7 were insufficient to set forth a cause of action for tortious
8 interference").

9 Counterclaim plaintiffs do, however, identify one
10 business relationship with specificity. For this I rely on
11 Michael Donnolo's declaration titled "Sensitive Business
12 Information" ECF No. 120-2. Despite this title I will discuss
13 the declaration openly because counterclaim plaintiffs have
14 filed it on the public docket.

15 The declaration states that the counterclaim defendant
16 made "patently false" statements to a specific potential
17 client, ECF No. 120-2, Paragraph 6. While Mr. Donnolo does not
18 identify that client by name, he notes that "the name of the
19 potential client is known to all parties" and can be "disclosed
20 to the Court *in camera* or under seal at the Court's request."
21 *id.* at 1 Note 1.

22 I will therefore turn to counterclaim plaintiffs'
23 likelihood of success on the merits of their tortious
24 interference claim only as they relate to the potential client
25 identified in the Donnolo declaration.

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1 "Unlike the claim for tortious interference with
2 contract, which requires a plaintiff to show no more than that
3 the defendant intentionally, and without justification,
4 procured a breach of a valid contract for which he was aware, a
5 claim for tortious interference with prospective economic
6 advantage requires the plaintiff to show that the defendant was
7 motivated solely by a desire to harm and not with a permissible
8 purpose, such as normal economic self-interests." *Cartiga, LLC*
9 *v. Aquino*. No. 24 Civ. 1014 (PAE), 2025 WL 388804 at *10
10 (S.D.N.Y. Feb. 4, 2025).

11 "Therefore when a plaintiff is alleging interference
12 with a nonbinding or future relationship, he or she must show
13 that the defendant's conduct amounted to a crime or an
14 independent tort, or the defendant must have engaged in the
15 conduct for the sole purpose of inflicting intentional harm on
16 plaintiff." *RBG Management Corporation v. Village Super Market*
17 *Inc.*, 692 F. Supp 3d 135, 149 (S.D.N.Y. 2023).

18 Counterclaim plaintiffs suggest that counterclaim
19 defendants' statements violated the independent tort of
20 defamation, albeit as part of their irreparable harm argument,
21 not the merits. ECF No. 120-9 at 15-16. To state a claim for
22 defamation under New York law, a plaintiff must allege "that a
23 defamatory statement of fact was made concerning the plaintiff;
24 that the defendant published that statement to a third party;
25 that the statement was false; that there exists some degree of

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1 fault; and that there are special damages or that the statement
2 is defamatory *per se*, i.e. it disparaged the plaintiff in the
3 way of his or her office, profession, or trade." *Kolchinsky*,
4 2012 WL 639162 at *4.

5 A defamation claim must "identify the purported
6 communication and indicate who made the communication when it
7 was made and to whom it was communicated." *Elcan Industries*
8 *Inc. v. Cuccolini S.R.L.*, No. 13 Civ. 4058 (GBD) 2014 WL
9 1173343 at *9. (S.D.N.Y. Mar. 21, 2014) (cleaned up). Here,
10 Mr. Donnolo's declaration "fails to identify who made the
11 allegedly defamatory statement, when they were made or where"
12 *id.* "These allegations lack the specificity required to set
13 forth a defamation claim." *id.*; see also *Cruz v. Marchetto*, 2012
14 WL 4513484 at *4 (S.D.N.Y. Oct. 1, 2012) (failure to
15 specifically plead "when, where, or in what manner the
16 statements were made" necessitates dismissal of defamation
17 claim).

18 Moreover, the New York Court of Appeals has never held
19 that any misrepresentation to a third party is sufficient to
20 sustain a claim for tortious interference with prospective
21 economic relations. *Friedman v. Coldwater Creek Inc.*, 321 F.
22 App'x 58, 60 (2d Cir. 2009).

23 Thus, counterclaim plaintiffs have not shown that
24 counterclaim defendants' "conduct amounted to an independent
25 tort." *RBG Management*, 692 F. Supp 3d at 149.

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1 I will turn to whether counterclaim plaintiffs has
2 shown that counterclaim defendant "engaged in the conduct for
3 the sole purpose of inflicting intentional harm on plaintiff."
4 *Id.*

5 As the New York Court of Appeals has explained,
6 competition "provides an obvious motive" for a defendant's
7 "interference other than as a desire to injure" the plaintiff.
8 *Carvel Corporation v. Noonan*, 3 N.Y. 3d 182, 191 (2004); See
9 *RBG Management*, 692 F.Supp. 3d at 150 (holding that an
10 allegation that the defendant "was trying to compete with the
11 plaintiff does not permit the Court to infer it acted solely to
12 inflict intentional harm on the plaintiff.")

13 Here, Mr. Donnolo's declaration strongly suggests that
14 is counterclaim defendants were competing with counterclaim
15 plaintiffs for the HVAC contract with the potential client.
16 Mr. Donnolo "has several meetings with potential client,
17 including a presentation of the Braya unit." And he "also
18 knows that potential client has been in touch with plaintiff
19 and Tecspec which resulted in a review of the product
20 manufactured by Tecspec." ECF No. 120-2, Paragraph 3.
21 Mr. Donnolo further states that the potential client met with
22 "both Braya and Tecspec. *Id.*, Paragraph 4.

23 The most "plausible inference to be drawn from these"
24 statements is that counterclaim defendants were "motivated at
25 least in part by their own economic interest." *RBG Management*

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1 692 F. Supp 3d at 149, see *Carvel* 3 N.Y. 3d at 362 (dismissing
2 tortious interference with prospective economic advantage
3 claims, where "it is undisputed that Carvel's motive in
4 interfering with the franchisees' relationships with their
5 customers was normal economic self-interest"); *Cartiga*, 2025 WL
6 388804 at *11. (Dismissing tortious interference with business
7 relationship claims where the plaintiff's allegations that the
8 defendant "reached out to business contacts of the plaintiff
9 for the purpose of seeking to obtain the business for herself
10 and/or a direct competitor, supported that the defendant was
11 motivated, at least in part, by her own economic interest").

12 Counterclaim plaintiffs, therefore, have not shown
13 that counterclaim defendants' conduct toward the potential
14 client "amounted to a crime or an independent tort" or was "for
15 the sole purpose of inflicting intentional harm on"
16 counterclaim plaintiffs. *RBG Management*, 692 F. Supp. 3d at
17 149. Without such a showing, they are not likely to succeed on
18 the merits of their claim for tortious interference with
19 business relationships.

20 Accordingly, the motion for a TRO is denied.

21 As a final note, I will say that at the time of this
22 hearing, Braya Concepts LLC, Braya Machine Company LLC, Braya
23 Systems LLC, Braya Ventures LLC, John Michael Long, Joshua
24 Donnolo, and Michael Donnolo are not currently restrained or
25 enjoined from entering into any new contracts. But a ruling on

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1 plaintiffs' preliminary injunction motion, including whether
2 one or more of those named defendants is enjoined from entering
3 into certain contracts is forthcoming.

4 Is there anything else either side wishes to be heard
5 on now?

6 MS. WASSERMAN: No, thank you, your Honor. Thank you
7 for your time today.

8 MR. BLUM: No, your Honor. Thank you.

9 THE COURT: All right. So that we can have a record
10 of what happened today, counterclaim plaintiffs, could you
11 please order the transcript, and we are adjourned for now.
12 Thank you all.

13 (Adjourned)